UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7951

ROBERT MARTIN BARRITT,

Petitioner - Appellant,

v.

WARDEN DAVID BALLARD,

Respondent - Appellee.

Appeal from the United States District Court for the Northern District of West Virginia, at Elkins. Robert E. Maxwell, Senior District Judge. (2:08-cv-00043-REM-JS)

Submitted: January 14, 2010 Decided: January 22, 2010

Before MOTZ, GREGORY, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Robert Martin Barritt, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert Martin Barritt seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2254 (2006) petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2006). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that any assessment of the constitutional claims by the district court is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). We have independently reviewed the record and conclude that Barritt has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal.* We dispense with oral argument because the facts and legal

* We decline to consider claims Barritt seeks to raise in this court, which claims were not previously raised first in the district court. See Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993).

contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED